

**Southeast/Gulf Region NRDA Workshop**  
**April 13-14, 2005**  
**REPORT**

At the 2004 National Cooperative Damage Assessment Workshop, trustee and industry participants expressed great interest in continuing the dialogue on damage assessment in regional settings across the country. In response, the National Oceanic & Atmospheric Administration (NOAA) and the American Petroleum Institute (API), among others, committed to organizing a series of regional workshops in 2005. The objective of these workshops is to allow practitioners to explore ways to improve efficiency and coordination while also reducing conflict and confrontation in natural damage assessment and restoration (NRDA) cases. Ultimately, these workshops are intended to be stepping stones to future discussions on damage assessments outside the context of cases.

The first of these regional meetings, the Southeastern/Gulf regional workshop, was held on April 13-14, 2005 in Savannah, Georgia. This workshop brought together approximately seventy regional representatives from government trustees (both federal and state) and industry. *See workshop agenda and participants list.*

**Day 1 – April 13**

Welcoming Remarks

Mike Hansen of ConocoPhillips opened the meeting (*see Mike's biography*). Mike emphasized that the intent and spirit of this meeting was to be fully engaged, meet each other openly and with respect, listen and acknowledge each other's views and positions, and consider and incorporate new ideas as they are offered.

Tom Dillon of NOAA echoed Mike's sentiments (*see Tom's biography*). Tom stressed that participants speak on behalf of themselves, leaving their affiliations outside. Participants should consider what is being said for its merit. The NRDA process works best when people develop personal relationships and take time to develop those relationships.

Eli Reinharz of NOAA highlighted the genesis of the regional workshops, which grew from the commitment coming out of the 2004 National Cooperative Damage Assessment Workshop. While these regional workshops are focused on NRDA issues across the board (i.e., the focus is not on cooperative NRDAs *per se*), these workshops should lead to better cooperation. Eli noted that the Southeastern/Gulf regional workshop is the first in this series of regional workshops. This workshop requires participants to make the most of their efforts in order to:

- Gain an in-depth understanding of the respective stakeholder interests in damage assessment cases;

- Discuss the specific challenges and opportunities that both trustees and industry confront in the Southeastern/Gulf region;
- Learn how trustees and industry might enhance their interaction and coordination in damage assessment cases, effectively addressing these challenges and opportunities;
- Develop and improve working relationships with other practitioners within and outside their states; and
- Identify workable coordination approaches, mechanisms, and tools.

### Highlights of the San Diego Cooperative Assessment Workshop

Tony Penn followed up with the Highlights of San Diego Cooperative Assessment Workshop in 2004 (see [Tony's presentation and biography](#)).

Tony talked about the goals and high points of the national workshop, noting that it truly was a challenging work session that resulted in some productive outcomes – including the desire to follow through with regional dialogue among industry and trustees.

### Workshop Goals and Agenda/Interview Themes

Iris Ioffreda and Marlana Valdez of Organizational Learning Associates introduced themselves as facilitators of this workshop (see [Iris' and Marlana's biographies](#))

They explained the planning committee's goals for the workshop, which were:

- a. Focus on issues pertinent to the respective region;
- b. Bridge the knowledge gap between novice and experienced practitioners;
- c. Work to correct problems, i.e., identify and implement creative solutions to issues identified in San Diego & here;
- d. Create an environment in which people can discuss issues outside context of NRDA cases; and
- e. Continue regional dialogues.

The ultimate goal is that, during these 2 days, the participants will develop a structure for ongoing dialogue about NRDA.

Next, the facilitators presented background information on the workshop. Approximately 15 participants from different sectors were interviewed to determine how best to make the workshop relevant and how best to move the NRDA process forward. The interview data was broken down into themes as follows:

- 1. Skills NRDA Team Members Need**
  - a. Science and research skills
  - b. Interpersonal “people” skills

- c. Negotiation skills - Ability to integrate disciplines; to see problem from multiple perspectives – adaptive, flexible thinking

#### Team Issues that Cause Problems

- a. Assigning someone to work on team who lacks experience
- b. Instability – changing membership on teams
- c. Low trust

The facilitators emphasized negotiation skills as critical to successful NRDA practice and recommended that all participants take a professional development course on negotiation.

“Successful” negotiation is the ability to keep all parties engaged and invested in the process, and not only does the skill need to be practiced, but the traditional adversarial model has been replaced in recent years with more cooperative models based on information sharing and interests focus.

## **2. Models/Methodology/Tools for NRDA Cases**

- a. Weak science has been used in support of some models
- b. Need for some agreed-upon methodology so everything’s not up for argument in every case. Need to go into case with some accepted assumptions or precedent or, if without setting precedent, establish models/variety of alternatives for measuring injury

## **3. NRDA Process Issues**

#### What Impedes Process

- a. Lawyers, consultants, federal trustees, state trustees, industry, tribes, public
- b. Logjams in DC – various agencies. Questions re: why some cases get DC attention and others don’t; who speaks for federal agencies
- c. Lack of clarity about who’s responsible for starting case – state, EPA, NOAA, DOI
- d. Ongoing difficulty in coordinating among federal trustees
- e. Interstate coordination lacking. People have difficult finding counterparts/contacts -- particularly important when case crosses state boundaries/involves common bodies of water. PRP dealing with shifting state regulations/approaches
- f. Coordination difficulties breed distrust

## **4. Need to Exchange Information/Coordinate among Trustees and Industry**

- a. Need opportunity to meet regularly outside context of cases to problem-solve and share best practices
- b. Need to reach out to smaller companies with fewer resources that may know less about NRDA practice

The facilitators then explained the design of the workshop which was built around four small group sessions, with membership in each small group balanced according to sectors represented and level of experience. The four sessions would address NRDA

- Tools
- Process
- Innovations
- Next Steps

The facilitators set ground rules for the workshop, requesting that participants follow the ground rules to encourage open, honest dialogue:

- Be present and engaged, participate fully
- Listen
- Open and respectful dialogue – be honest – tell the whole truth
- It's OK to disagree
- No attribution
- In terms of discussions – refrain from discussing case or site sensitive issues. Reference specific cases and past case approaches only when doing so will further the audience's understanding
- Refrain from solicitations or marketing of products and services

Finally, the small group leaders were introduced, and the participants introduced themselves to one another.

### Advancing NRDA By Developing New Tools

Larry Barnthouse of LWB Environmental Services, and Ron Gouguet of NOAA described Ecological Risk Assessment and Ecological Services Assessment and their potential application in the NRDA context. This session addressed the tension between the desire to restore damaged resources quickly and use of “hard science” to support assessment of injury (see Larry's and Ron's presentation; links to their biographies are found above).

The challenge is that the NRDA process often runs parallel to the ecological risk assessment process, but may not be taking advantage of data opportunities to optimize solutions and costs. Larry laid out some obvious places where both processes can be linked as well as some common tools. Ron followed with case examples (e.g., ALCOA, Baily Waste Site) where technical integration of the two processes bore fruit using a reasonably conservative assessment approach.

### *Q&As and Comments*

Q (to both) - By integrating, did you reduce the time for recovery?

A - No, not always. However, in the cases cited, we did reduce time and costs of the technical assessment and potential restoration projects.

Q (to Ron) – When did you bring in the public?

A - In ALCOA, we took advantage of the Citizen Advisory Committee soon after the RI (Remedial Investigation) was signed.

Comments – One commenter talked about the need to continue to talk to public throughout both processes. Another commenter cited the CAP National Workshop, which touched on Citizen Advisory Committees -- their utility, approach, and benefits. The same commenter also mentioned that pre-scoping public interests and players is very useful. Another commenter felt that mapping tools were especially useful to communicate risk and injury.

Q (to Ron) – What agreements have been consummated with EPA to bring trustees into the eco-risk process?

A – Ron referred participants to the ALCOA Superfund MOA (not an ACOE), which took several years to prepare.

*Comment* – One commenter noted that the value of PRPs is enormous. We would encourage all to invite PRPs early to resolve differences early on with the opportunity to sit at table, address concerns, and develop relationships. At the same time, another commenter challenged PRPs to insist on trustee participation early in the remedial process as it's sometime difficult for EPA to invite trustees to the table.

#### Introduction to Small Group Sessions (after the morning break)

Prior to dividing into small groups, both Iris Ioffreda and Marlana Valdez gave a short presentation on group process issues. They pointed out that most groups rush to work on the content issues without giving any thought to process, but often what dooms a group are process issues – people feel ignored, that they aren't being heard, or that the decision making process is unfair, that some group members' behavior is unacceptable, etc. The pre-workshop interviews confirmed that establishing a process for the group's work and understanding group dynamics is critical to the success of a cooperative assessment. Those interviewed said that in past cases in which cooperative efforts had collapsed, the breakdown could be attributed in great part to "people issues" or problems with the group. At the outset, groups should develop a common goal or vision, create an explicit set of rules for functioning, determine how decisions will be made, and set up a communications plan.

They also explained that groups go through predictable stages of development, and that some group dynamics can be attributed to the group's developmental stage. In the "forming" stage, the group focuses on issues of inclusion and leadership, and interactions are polite and tentative as trust among group members is low. In the "storming" stage, teams may split into polarized subgroups, express general dissatisfaction with the group, and reject leadership or authority figures. In the "norming" stage, the group begins to develop a sense of cohesiveness and sets up structures and rules to help it function more

effectively. Finally, in the “performing” stage, the group functions smoothly with mutual problem solving and cooperation and an emphasis on productivity. Groups can get stuck at any of these stages, so it is important for leaders to know how to assist the group in making a timely move to the next stage. Group leaders should surface the potential developmental issue, discussing it openly with group members and discussing with them whether actions should be taken to ensure the group progresses to the next developmental level.

Finally, they discussed group behaviors that support and hinder group effectiveness and asked participants to watch for those behaviors in their small group discussions ([see the Handouts](#)).

### Small Group Session 1: Tools for Improving NRDA Assessments

The facilitators introduced the small group problem, and, rather than following the discussion questions verbatim, asked the groups to determine what were the best aspects of Ecological Risk Assessment and of NRDA process, and to develop for their group reports, the most critical elements of a model combining the two. Groups were asked to use brainstorming principles to enhance their discussion ([see “brainstorming” handout portion of Handouts, p. 9](#)). Each group was asked to pick a “scribe” who would turn in notes from their discussion for inclusion in this report.

The small groups identified challenges in attempting to measure injury and quantify service loss and approaches that might facilitate this aspect of NRDA work, particularly approaches incorporating aspects of Ecological Risk Assessment.

Lunch – groups broke for lunch

### Integrating Remediation and Restoration

A panel discussion addressed when and how cleanup and restoration should be integrated and other methods of improving efficiency in NRDA cases. Panel members included [Holly Deal](#) of the U.S. Dept. of the Interior, [Richard Haynes](#) of the South Carolina Dept. of Health & Environmental Control, [Richard Seiler](#) of the Texas Commission on Environmental Quality, and [Jerry Hall](#) of Blasland, Bouck & Lee. The panel members’ presentations and biographies are provided ([see the presentations of Holly, Richard H., Richard S., and Jerry; links to their biographies are found above](#)).

Holly Deal indicated that integration of restoration into the remedial process certainly makes good sense. Some advantages of integration include: offering PRPs an opportunity to resolve their liabilities in one fell swoop; saving transaction costs; allowing trustees to flesh out restoration ideas early and achieve restoration more quickly; accessing expertise when and where needed; using a common approach while using the same data and thus enhancing data

reliability; optimizing mobility needs; and ensuring complete and consistent participation. These advantages can be facilitated by developing a funding agreement between the PRPs and trustees. However, there are also some challenges to integration, such as: potentially more challenging communication and historically adverse relationships between EPA and the trustees. What may be useful to overcome these challenges is clear and effective communication that includes people with tact and diplomacy. Agreements among the trustees, EPA, and PRPs is one mechanism that may be applied. These agreements should, for instance, spell out commitments, roles and responsibilities, and a structure for working together. If the agreement takes too long to conclude, trustees may want to work together on an informal basis. Regardless of the mechanism, the bottom line is that integration is likely to resolve liability at a lesser cost.

Richard Haynes talked about South Carolina's Lake Hartwell Superfund Site as an example of how the restoration process can enhance the remediation effort.

Richard Seiler described a portion of the Texas Risk Reduction Program, the state's rules for remedial programs that include a mechanism for Natural Resource Trustee involvement in ecological risk management decisions. Richard pointed to a series of innovative tools and model documents. Since 1993, all NRD cases in Texas have been integrated into remedial processes consistent with NCP provisions. To ensure that this program is applied across the board among trustees, Texas also signed a co-trustee MOU. In Texas, integration of NRD is most effective way of resolving liability, providing a regulatory framework to make the process more transparent and cost-effective.

Jerry Hall proposed the idea that Net Environmental Benefits Analysis, of which Ecological Services Analysis is a NEBA equivalent approach, is a credible idea in the NRDA realm. He noted that this approach takes into consideration issues regarding natural attenuation and acquisition, among others.

#### *Q&As and Comments*

Q (to all) – How do you address baseline in the integration approach?

A – It's site specific, depending on the availability of information. However, in effect, it's not a problem as the remedial process must also address baseline using common data sets or information having possibly different purposes.

Q (to all) – Texas adopted the NEBA (ESA) approach. What other states have done so?

A – NJ. Others? But ESA in Texas is different in that trustees have input in the process and it's formalized.

#### Small Group Session 2: Improving NRDA Process

Small groups discuss issues, policies, and practices that impede the progress of NRDA cases and methods of improving the process.

Marlana explained that the small group problems provided guidance for discussion but the questions offered did not have to be answered completely if the group discussion went beyond the problem.

### Small Group Reports and Discussion

Iris Ioffreda and Marlana Valdez facilitated the break-out reports (see [Small Group Assignments and Small Group Reports](#)).

### Close

Iris explained that dinner would be in the courtyard at 6:30 p.m, following an optional NRDA 101 session for those interested.

### “NRDA 101” - Discussion and Q&A Session

The workshop provided an optional session on NRDA to participants new to NRDA, hosted by Ron Gouguet, Tony Penn, and Eli Reinhartz of NOAA. Nearly half of the participants stayed for this session.

Dinner – Dinner followed the wrap-up.

## **Day 2 – April 14**

### Welcome

Iris Ioffreda and Marlana Valdez open up the second day of the workshop.

### A Tale of Two Assessments: Lavaca Case Study

Don Pitts of Texas hosted this session on the history and progress of a complex NRDA case, the ALCOA Lavaca Bay NRDA Case. Don also discussed discussed the methods used to produce a successful settlement (see [Don's presentation and biography](#)).

In particular, Don focused on characteristics that make for a successful NRDA, and those that were relevant to Lavaca, including:

- Coordination of the Trustees;
- Decision makers at the table;
- Continuity of the players;
- Directed studies with known path forward; and
- People skills – communication, interpersonal skills etc.

Don stressed that the absence of any of these factors could easily have led to a failed case.



### *Q&As and Comments*

Q – How long a time was there between when public rejected recreational projects and ALCOA stepped forward with a solution?

A – A very short time, no more than 6 to 8 weeks.

Q – How much was spent and how much saved w/out missteps?

A - \$ 2.8 million – about half spent in 1<sup>st</sup> 3 years while the parties argued.

Q – Why were there so many trustees?

A – These were the entities with trust resources and designated as trustees, namely: 3 state trustees and 2 Federal trustees (NOAA and DOI/FWS).

### Restoration Banking in the NRDA Context

A second panel discussion began this morning on the potential role of restoration banking in NRDA. Panel members included **Ron Gouguet** of NOAA and **Gregory Biddinger** of ExxonMobil. The panel members' presentations and biographies are provided ([see Ron's and Gregory's presentation; links to their biographies are found above](#)).

Upon defining restoration banking and highlighting its possible application and benefits, Ron presented a host of questions and issues on this topic and noted that much has yet to be learned from other areas such as mitigation banking. Ron indicated that NOAA is engaged in the topic of restoration banking because it is involved in several cases in which parties have raised restoration banking as a potential or partial solution. Ron outlined at least three approaches to restoration banking, emphasizing the need to develop systems and infrastructure to address any of these approaches. While there are some tools to address process issues, we may also need additional tools. Ron stressed the need for further dialogue and feedback on restoration banking as there are still numerous questions and concerns.

Greg emphasized that restoration banking has distinct advantages, highlighting the need to test the idea. This conclusion was consistent with one participant's statement that we need to find test or pilot restoration banking projects as this concept is still in its infancy.

### *Q&As and Comments*

Q (to all) – One commenter noted that there might be the chance of gaming the system; that is, PRPs could buy into future liability cheaply by overcompensating cost-effectively for a prior project, i.e., creating 100 acre value with a 10 acre restoration project and buying into the balance through future incidents.

A – The system could be gamed; however, this is not in the spirit of reasonable compensation.

Q (to Ron) – What of the proposal of no credit accumulation? Why not get services in interim?

A – We can.

Q (to all) – Isn't there a possibility of a PRP being lax?

A – Yes, but a PRP still need to address its liability. This is more a concern of NRDA.

Q (to Greg) – Isn't there a need to be careful of the pitfalls of mitigation banking, e.g., public versus private lands. Does industry think it's a positive to give private land to public trust?

A – More land is held privately, but we don't want to exclude public lands. We need to reference back to the goals. We also need to be mindful of context and the need to consider joint ventures to help leverage restoration. We need to be more flexible.

Q (to Greg) – What about incentives, what might they be?

A – What may be helpful when thinking of incentives is keeping in mind the ecological end use. Cost is one incentive if you can convince the community.

Q (to all) – Why bank if you can do it there and then?

A – Why not? You may provide incentives to companies to do even more restoration. You may also help better monitor sites, which is an issue.

Q (to Ron) – How is restoration banking different from mitigation banking?

A – We may need to learn and borrow from mitigation banking where we can. One difference is the issue of time scale.

*Comment* – There was some discussion about whether we can provide credit to land that is already protected, which is not allowed under CERCLA unless the land is in imminent danger. Unless the PRP makes a commitment, no credit can be granted.

*Comment* – One commenter also had issue with metrics being complicated, i.e., How do you convert ducks into habitat?

### Coordinating NRDA Work

The final panel discussion during the morning set the stage for inter- and co-agency coordination – past and future. Panel members included [Mike Hansen](#) of ConocoPhillips and [Lisa DiPinto](#) of NOAA. The panel members' presentations and biographies are provided ([see Mike's and Lisa's presentations; links to their biographies are found above](#)).

Mike provided a summary of basic communication concerns and snafus. While wholly intuitive, these are the problems that seem to persist and require some

sort of mechanism to address – through establishing groundrules at a minimum or perhaps developing a communication plan.

In talking about interagency coordination, Lisa posed the challenges that lay at each of our doorsteps, especially when many parties are involved. Lisa noted that resolving these issues is not easy, but there are some mechanisms and tools available to us (e.g., MOAs, etc.). To address coordination challenges, she spoke of various fora that can alleviate the anxiety of dialogue outside the context of cases. In particular, she suggested that one model that is quite helpful in advancing constructive dialogue is the Joint Assessment Team, which exists in at least two regions of the country. Lisa stated that this model or some analogue can go a long way toward further facilitating inter-agency coordination into the future.

### *Q&As and Comments*

Q – What incentives exist for small companies or industries that have no more liability?

A – Most industry/companies have multiples sites, so this is usually not a problem. Small companies usually don't have the institutional or administrative capacity to handle NRDA, but mid-size companies will likely have such support and would benefit from involvement in NRDA lessons. However, given the context of the question, these companies still may benefit for future experiences as business does not remain static, i.e., such companies as cited in the question may grow or merge in ways that they incur future liabilities.

*Comment* – Notwithstanding challenges among trustees and PRPs, there was some frustration about the inability to more effectively engage EPA.

### Small Group Session 4: Next Steps – Where Should We Go from Here?

In a different small group set-up than the previous day, small groups convened the rest of the morning into the afternoon to discuss next steps that would enhanced coordination and where we might go from here.

Small groups based on EPA Regions 4 and 6 were respectively divided up to discuss how to continue to share information and improve the NRDA process outside the context of cases.

[See the Small Group Assignments, Small Group Reports, and Action Plan\).](#)

### Closing Comments

Tom Dillon of NOAA closed the workshop thanking everyone for the full participation and independent, constructive thoughts.

[Also see workshop Evaluations.](#)